

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA  
DUBUQUE DIVISION

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA  
AUG 13 1996

In Re

CAROL S. DIETZ

Debtor.

Case No. 95-21286 KD

FCC NATIONAL BANK D/B/A

FIRST CARD

Plaintiff,

Adversary No. 95-2158 KD

vs.

CAROL S. DIETZ

Defendant.

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED: Judgment is entered on behalf of FCC National Bank d/b/a First Card, and against Debtor Carol S. Dietz as per the Order. Said Judgment is non-dischargeable under Section 523(a)(2)(C).



Clerk of Bankruptcy Court

By:

*Marion A. Goley*  
Deputy Clerk

SEAL:

8-13-96  
Date of Issuance:

kris\wp\ccl\fccdietz.jud

Recorded:  
Vol II  
page 95  
21

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In Re	)	
CAROL S. DIETZ	)	Case No. 95-21286 KD
Debtor.	)	
	)	
FCC NATIONAL BANK D/B/A	)	
FIRST CARD	)	
Plaintiff,	)	
	)	Adversary No. 95-2158 KD
vs.	)	
CAROL S. DIETZ	)	
Defendant.	)	

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**ORDER**

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On August 13, 1996, the parties in the above-captioned matter presented to the Court this stipulated order. Debtor, Carol S. Dietz was represented by Brian W. Peters of Jacobs & Peters Law Offices. FCC National Bank d/b/a First Card was represented by Chad C. Leitch of O'Connor & Thomas, P.C. After the presentation of this stipulated order, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

**STATEMENT OF THE CASE  
AND FINDINGS OF FACT**

Plaintiff is the holder of an unsecured claim against Debtor/Defendant arising from charges made on a First Card credit card. Defendant made numerous charges totally \$2,931.71 against this credit card. Defendant took several cash advances and comchecks between May 20, 1995 and June 2, 1995, all within 60 days prior to filing bankruptcy. This indebtedness is presumed to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(C). Defendant made these charges against her credit card at a time when she was unable to meet her existing financial obligations and she was sustaining a net monthly loss between income and expenses. Defendant had made the representations she had the ability to repay the loan, when in fact she did not. Plaintiff reasonably relied on Defendant's representation and Plaintiff suffered loss as an approximate result of those representations.

### CONCLUSIONS OF LAW

Plaintiff has the burden to prove the elements of its claims under 11 U.S.C. § 523 by a preponderance of the evidence. Grogan vs. Garner, 498 U.S. 279, 111 S.Ct. 654, 661 (1991). Plaintiff relies upon § 523(a)(2)(C) as grounds for excepting its claim from discharge. Plaintiff has met all the elements of its § 523(a)(2)(C) claim by a preponderance of the evidence.


### DECREE

WHEREFORE Plaintiff, FCC National Bank d/b/a First Card's complaint objecting to the dischargeability of this debt is granted.

FURTHER, judgment is entered on behalf of FCC National Bank d/b/a First Card and against Debtor, Carol S. Dietz in the amount of \$2,931.71 plus 10% interest from July 12, 1995 and the court costs taxed herein.

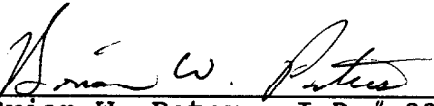
FURTHER, said judgment is non-dischargeable under § 523(a)(2)(C).

SO ORDERED this 23 day of August, 1996.

By:   
Paul J. Kilburg,  
U.S. Bankruptcy Judge

APPROVED AS ABOVE STIPULATED:

By:   
Carol S. Dietz, Debtor

By:   
Brian W. Peters, I.D.# 8372  
Attorney for Debtor/Defendant

This order prepared by:

Chad C. Leitch, I.D.# 3192  
O'Connor & Thomas, P.C.  
CyCare Plaza  
700 Locust St., Ste. 200  
Dubuque, IA 52001

Notice sent to: *W. J. Smith*

Chad C. Leitch  
O'Connor & Thomas, P.C.  
CyCare Plaza  
700 Locust St., Suite 200  
Dubuque, IA 52001

Brian W. Peters  
818 CyCare Plaza  
PO Box 1711  
Dubuque, IA 52004-1711

US Trustee - CR  
Law Building Suite 400  
225 2nd Street SE  
Cedar Rapids, IA 52401

*8.13.96*  
*my*

AUG 21 1996

## United States Bankruptcy Court

NORTHERN District of IOWA

**In re**

Bankruptcy Case No. 95-21286 KD

CAROL S. DIETZ

Debtor ,

FCC NATIONAL BANK D/B/A  
FIRST CARD

Plaintiff,

Adversary Proceeding No. 95-2158 KD

CAROL S. DIETZ

**Defendant.**

## BILL OF COSTS

Notice is given that the following Bill of Costs will be presented to the bankruptcy clerk at the following place and time:

Address 800 The Center, 425 Second St. SE P. O. Box 74890 Cedar Rapids, IA 52407	Room 800
	Date and Time 09/05/96 11:30 a.m.

Judgment was entered in the above entitled action on 08/13/96 against Carol S. Dietz, Debtor/Defendant.  
(date) (date)

The clerk of the bankruptcy court is requested to tax the following as costs:

Fees of the clerk .....	\$	<u>120.00</u>
Fees for service of summons and complaint .....	\$	_____
Fees of the court reporter for any and all part of the transcript necessarily obtained for use in the case .....	\$	_____
Fees and disbursements for printing .....	\$	_____
Fees for witnesses (itemized on reverse) .....	\$	_____
Fees for exemplifications and copies of papers necessarily obtained for use in this case .....	\$	_____
Docket fees under 28 U.S.C. § 1923 .....	\$	_____
Costs incident to taking of depositions .....	\$	_____
Costs as shown on Mandate of appellate court .....	\$	_____
Other costs [Please itemize]	\$	_____
	\$	_____
	\$	_____
TOTAL	\$	<u>120.00</u>

## DECLARATION

I, attorney for FCC NATIONAL BANK d/b/a FIRST CARD declare under penalties of perjury that the  
(name of party)

foregoing costs are correct and were necessarily incurred in this action, that the services for which fees have been charged were actually and necessarily performed, and that a copy of this Bill of Costs was mailed this day with postage fully prepaid to:

Name and Address of Judgment Debtor  
CAROL SUE DIETZ  
1120 MAIN STREET  
DUBUQUE, IA 52001

BRIAN W. PETERS  
JACOBS & PETERS LAW OFFICE  
CYCARE PLAZA  
700 LOCUST ST, STE. 818  
DUBUQUE, IA 52001

8/16/96

Date \_\_\_\_\_

*Chad J. J. #3192*  
Signature of Attorney

*Signature of Attorney*

COSTS ARE TAXED IN THE FOLLOWING AMOUNT AND INCLUDED IN THE JUDGMENT: \$ 120.00

Clerk of the Bankruptcy Court  
George D. Prentice II

9-5-96

Date \_\_\_\_\_

Bx.

Deputy Clerk

Recorded: Vol V

Page 95

Copy mailed this 9/5/96 to Chad Leitch, Brian Peters and U.S. Trustee, *Marionell G. Leitch* Deputy Clerk  
U.S. Bankruptcy Court

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)

NAME AND RESIDENCE		ATTENDANCE		SUBSISTENCE		MILEAGE		TOTAL		Not applicable.
Days	Total Cost	Days	Total Cost	Days	Total Cost	Miles	Total Cost			